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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Glenn)

THE PEOPLE, Plaintiff and Respondent, v. NORMA JEAN CORDERO, Defendant and Appellant.	C062146 (Super. Ct. No. 08SCR04970)

The defendant Norma Jean Cordero was arrested for being under the influence of illegal drugs. The arresting officer had been informed that she used her vagina to conceal illegal substances when traveling. On the way to booking the defendant at the jail the arresting officer took the defendant to a medical clinic where he authorized an x-ray of her pelvis to determine whether it contained an illegal substance. After the x-ray confirmed the presence of drugs the defendant retrieved them from her vagina.

After defendant's motion to suppress the evidence was denied, she pled guilty to transportation of methamphetamine and being under the influence of methamphetamine. (Health & Saf. Code, §§ 11550, subd. (a), 11379, subd. (a).) The trial court placed defendant on Proposition 36 probation. (Pen. Code, § 1210.1.)

Defendant claims in effect that the drugs were the product of the x-ray search, that the x-ray is an unduly invasive means of search of her person and that, as a deterrent to such conduct, the trial court should have granted her motion to suppress the drugs found there.

We disagree and will affirm the judgment.

FACTS

After the information was filed, defendant moved to suppress evidence. (Pen. Code, § 1538.5.)

The sole witness at the suppression hearing was Willows Police Department Officer Kelly Meek. On July 20, 2008, she spoke with defendant, who was the passenger of a car that had been pulled over for traffic infractions. Defendant had "rigid muscle tone of her jaw" and constricted pupils, which, based on Officer Meek's drug recognition training, led her to believe defendant was "under the influence of a central nervous system stimulant." Officer Meek gave defendant tests similar to field sobriety tests, concluded defendant was under the influence of drugs, and arrested her.

Officer Meek testified to "street knowledge" that defendant has "been known for numerous years to use narcotics," and "when

she transports drugs she conceals it in her vaginal vault." Within the prior two months, Officer Meek had "knowledge from a subject who advised me that [defendant] always has drugs in her possession for transportation purposes, and she always conceals it in her vaginal vault." That person was the driver of the car Officer Meeks had stopped, and he was defendant's sexual partner and cohabitant. He had given Officer Meek this information three or four times before defendant's arrest, but not that day.

Officer Meek testified that when you arrest somebody, you have to take them to the jail and that jail inmates are not allowed to have drugs, and that drug packages concealed within the body could rupture, causing an overdose. Accordingly, after arresting defendant, Officer Meek took her to a medical center for a blood sample, and then ordered an x-ray by a laboratory technician "of her pelvic region to determine if there [were] any drugs concealed there." This was for defendant's "safety and for the safety of the facility [in which] she would be housed."

Before the x-ray was taken, defendant "admitted that she had a small baggie inside her." After the x-ray was taken, a nurse told Officer Meek that "the doctor said she did see contraband located inside her vaginal vault." Defendant asked if she should take out the drugs and Officer Meek told her that she was allowed to "if she wished. However, I was not making her do it." Defendant then took the drugs out, which proved to be methamphetamine.

The trial court denied the motion to suppress for two reasons. First, the court concluded that because defendant was under the influence of illicit drugs and was going to jail, it was necessary to check whether, in accordance with her usual practice, she had drugs on her person. Second, the trial court indicated there was "a good argument for inevitable discovery, in any event, before she was booked into the jail."

DISCUSSION

I
Search and Seizure

"The standard to review the denial of a suppression motion is well settled. We must defer to the trial court on all its factual findings if they are supported by substantial evidence. Once the facts are determined, we then decide de novo whether the search or seizure was reasonable under established constitutional principles." (*People v. Logsdon* (2008) 164 Cal.App.4th 741, 744.)

Defendant contends that the x-ray was an unduly invasive means of search of her person and therefore the fruits of that search, the drugs she retrieved from her vagina, must be suppressed. We shall conclude that it was reasonable under the circumstances for the arresting officer to authorize a search of defendant's pelvis at a medical center by means of an x-ray.

There was probable cause to arrest the defendant for being under the influence of illegal substances. That alone justified a limited search of the defendant for drugs. As an incident to the arrest the police may conduct a limited search "(1) for

instrumentalities used to commit the crime, the fruits of that crime, and other evidence thereof which will aid in the apprehension or conviction of the criminal; (2) for articles the possession of which is itself unlawful, such as contraband or goods known to be stolen; and (3) for weapons which can be used to assault the arresting officer or to effect an escape." (*People v. Superior Court* (Kiefer) (1970) 3 Cal.3d 807, 812-813.)

Further, there was probable cause to believe that illegal drugs were located in defendant's vagina because of two facts independent of the x-ray. First, defendant was under arrest for being under the influence of illegal drugs and was bound for jail.[1] Second, Officer Meek had credible evidence that defendant habitually stored drugs inside her vagina.[2]

Contrary to defendant's view, Officer Meek had much more than a "hunch" that defendant was carrying drugs in her vagina: Defendant was under the influence of drugs and was known to carry them in her vagina. The person who had repeatedly informed Officer Meek of this fact was intimate with defendant—and therefore in a position to know this unusual fact—and was present when defendant was arrested on this occasion. Officer

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[1] If the use of an x-ray had been denied to Officer Meek, defendant's vagina would have been searched manually at the station house and the drugs would have been produced in that manner.

[2] Arguably, a third fact existed: After being told an x-ray was to be used, defendant admitted having drugs in her vagina.

Meek could not allow defendant into the jail without checking her for narcotics, both to preserve the drug-free nature of the jail and to prevent any injury to defendant, if the baggie of drugs burst inside her vagina.

Thus the question is whether the use of an x-ray search of the pelvis was a constitutionally permissible means of conducting a search otherwise authorized. That leaves the invasive nature of the x-ray as the sole alleged ground of suppression. There are two aspects to this inquiry. First, the humiliating or degrading nature of an x-ray. Second, its harm to the body.

"[A]n x-ray is far less humiliating, degrading, invasive, annoying and physically uncomfortable than a physical viewing of the anal cavity or physical invasion of the rectal cavity. An x-ray search does not rise to the level of a body cavity search in the traditional sense." (*People v. Pifer* (1989) 216 Cal.App.3d 956, 961.) And so it is with an x-ray of the vaginal "vault."

Nor is it harmful. While it may be supposed that an x-ray of a women's pelvis might impose a risk of harm, especially if the women is pregnant, there is no evidence in the record on this point. A simple x-ray administered by medical personnel, is not an inherently harmful procedure (*Pifer, supra,* 216 Cal.App.3d at pp. 961-962), administration of which would call for suppression, like stomach pumping (*Rochin v. California* (1952) 342 U.S. 165 [96 L.Ed. 183] [under Due Process clause]) or surgery (*Winston v. Lee* (1985) 470 U.S. 753 [84 L.Ed.2d 662]

[under Fourth Amendment]). To the extent defendant contends the x-ray *was* harmful in this case, that issue is forfeited because it depends on facts not litigated at the suppression hearing. (See *People v. Danielson* (1992) 3 Cal.4th 691, 708.)

Lastly, defendant contends that because she was willing to take the drugs out *before* the x-ray, it was unreasonable for Officer Meek to proceed with the x-ray. Defendant overstates the testimony at the hearing. Officer Meek testified that defendant admitted to *having* drugs before the x-ray, but only discussed *removing* them herself after the x-ray. Further, although defendant admitted having drugs before the x-ray, without the x-ray, Officer Meek would not know how many baggies or bindles of drugs defendant had. Defendant might have produced one bindle to avoid the x-ray, and kept one or more hidden inside herself. Therefore, it was reasonable to proceed with the x-ray, to ensure that *no* bindles entered the jail.

Defendant contends that she might not have gone to jail. However, there was no evidence that she would not be placed in jail, and it is speculation to suggest that Officer Meek would have released an intoxicated arrestee, given Officer Meek's testimony about her concerns for defendant's well-being.

Lastly, defendant contends Officer Meek violated a statute regulating body cavity searches. (See Pen. Code, § 4030, subd. (b).) However, the statute is limited to "prearraignment detainees arrested for infraction or misdemeanor offenses . . . ." (§ 4030, subd. (b)).

II

Penal Code Section 4019

Pursuant to this court's miscellaneous order number 2010-002, filed March 16, 2010, we deem defendant to have raised the issue of whether amendments to Penal Code section 4019 apply retroactively to her case. We conclude that the amendments do apply to all appeals pending as of January 25, 2010. (See *In re Estrada* (1965) 63 Cal.2d 740, 745 [amendment to statute lessening punishment applies to acts committed before its passage provided the conviction is not final]; *People v. Hunter* (1977) 68 Cal.App.3d 389, 393 [applying *Estrada* to amendment allowing award of custody credits]; *People v. Doganiere* (1978) 86 Cal.App.3d 237 [applying *Estrada* to amendment involving conduct credits].)

Defendant was in custody for three days. The trial court imposed a "time served" three-day jail term as a condition of probation. Under the new formula, "a term of four days will be deemed to have been served for every two days spent in actual custody," with exceptions not applicable to this case. (Pen. Code, § 4019, subd. (f).) Defendant served one two-day period in actual custody, which is a probation order, which called for a "time served" jail term. However, it may affect her future entitlement to conduct credit deemed to be a four-day term. (See *In re Marquez* (2003) 30 Cal.4th 14, 25-26 [rounding up not permitted].) For that two-day period of actual custody, she would be entitled to two days of conduct credit. (Pen. Code, §

4019, subds. (b)(1) & (c)(1).) This conclusion does not require modification of the current probation order, which called for a "time served" jail term. However, it may affect her future entitlement to conduct credit.

DISPOSITION

The judgment is affirmed.

BLEASE, Acting P. J.

We concur:

NICHOLSON, J.

RAYE, J.